

)	
M.R., Appellant)	
)	
and)	Docket No. 21-1294
)	Issued: April 6, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Cleveland, OH, Employer)	
)	

Alan J. Shapiro, Esq., for the appellant
Office of Solicitor, for the Director

ORDER REMANDING CASE

Before:

ALEC J. KOROMILAS, Chief Judge
PATRICIA H. FITZGERALD, Deputy Chief Judge
JANICE B. ASKIN, Judge

On August 27, 2021 appellant, through counsel, filed a timely appeal from a July 20, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). The Clerk of the Appellate Boards docketed the appeal as No. 21-1294.

On December 10, 2020 appellant, then a 39-year-old letter carrier, filed a traumatic injury claim (Form CA-1) alleging that on October 31, 2020, while pulling herself into her truck all of her weight was placed on her left foot causing it to break while in the performance of duty. She stopped work on November 3, 2020.

In a development letter dated December 15, 2020, OWCP advised appellant of the deficiencies of her claim. It advised her as to the factual and medical evidence necessary to establish her claim and provided a questionnaire seeking a full description of the events and circumstances surrounding the alleged October 31, 2020 employment incident. OWCP afforded her 30 days to provide the necessary information. No further evidence was received.

By decision dated January 14, 2021, OWCP denied appellant's traumatic injury claim, finding that the evidence of record was insufficient to establish that the injury and/or events occurred as she described. It noted that she had not completed its December 15, 2020 development questionnaire or provided information clarifying the alleged October 31, 2020 employment incident. OWCP further noted that appellant did not submit medical evidence containing a medical diagnosis in connection with the injury or events.

OWCP received additional medical evidence.

On February 4, 2021 appellant requested reconsideration.

OWCP received reports from Dr. Thomas A. Olexa, a Board-certified orthopedist, dated February 11, March 11, and April 22, 2021, who treated appellant in follow-up for a left distal fibula fracture of the left ankle. Appellant reported sustaining an injury on October 31, 2020 when she was pulling herself into her truck, twisted her ankle, and fell. Dr. Olexa noted an x-ray of the left ankle revealed healed distal fibula fracture. He diagnosed other closed fracture of distal end of left fibula and noted that appellant was totally disabled until March 11, 2021 when she could return to office work and regular duty.

In a July 18, 2021 statement, appellant provided further factual details surrounding the October 31, 2020 work incident. She reported sustaining a prior fall on October 27, 2020 and returned to work after that injury on October 31, 2020, but felt very weak and was unsure if she would be able work a full day. Appellant indicated that she went to load her truck and fell while getting into her truck. She was assisted by a co-worker and immediately reported the injury to her supervisor and postmaster who suggested she go home. Appellant indicated that the postmaster did not provide a CA-1 until December 9, 2020. She was hospitalized from November 3 through December 3, 2020 and provided all medical documentation in support of her injury to the postmaster.

Appellant also resubmitted reports from Dr. Olexa dated December 17, 2020 and Chloe P. Callison, a physician's assistant dated March 5, 2021 that were previously of record.

By decision dated July 20, 2021, OWCP denied modification of the decision dated January 14, 2021. It noted that appellant failed to provide sufficient factual evidence to support that she sustained a work injury on October 31, 2020 in the manner alleged.

The Board has duly considered the matter and finds that this case is not in posture for decision. In the case of *William A. Couch*,¹ the Board held that when adjudicating a claim, OWCP is obligated to consider all evidence properly submitted by a claimant and received by OWCP before the final decision is issued. As detailed above, on reconsideration appellant submitted reports from Dr. Olexa dated December 17, 2020 and Chloe P. Callison, a physician's assistant dated March 5, 2021 previously of record. She also submitted additional evidence including medical evidence from Dr. Olexa dated February 11, March 11, and April 22, 2021, and a narrative statement dated July 18, 2021. OWCP, however, did not review this additional evidence in its July 20, 2021 decision. It, thus, failed to follow its procedures by not considering all of the relevant evidence of record.²

¹ 41 ECAB 548 (1990); *see K.B.*, Docket No. 20-1320 (issued February 8, 2021); *see also R.D.*, Docket No. 17-1818 (issued April 3, 2018).

² OWCP's procedures provide that all evidence submitted should be reviewed and discussed in the decision. Evidence received following development that lacks probative value also should be acknowledged. Whenever possible, the evidence should be referenced by author and date. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Initial Denials*, Chapter 2.1401.5(b)(2) (November 2012).

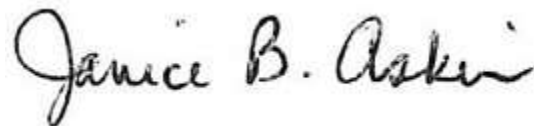
As Board decisions are final with regard to the subject matter appealed, it is crucial that OWCP address all relevant evidence received prior to the issuance of its final decision.³ The Board finds that this case is not in posture for decision, as OWCP did not address the above-noted evidence in its July 20, 2021 decision.⁴ On remand, following any further development as deemed necessary, OWCP shall issue an appropriate decision.⁵

IT IS HEREBY ORDERED THAT the July 20, 2021 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this order of the Board.

Issued: April 6, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board



Janice B. Askin, Judge
Employees' Compensation Appeals Board

³ *E.D.*, Docket No. 20-0620 (issued November 18, 2020); *see C.S.*, Docket No. 18-1760 (issued November 25, 2019); *Yvette N. Davis*, 55 ECAB 475 (2004); *see also William A. Couch*, *supra* note 1.

⁴ *D.S.*, Docket No. 20-0589 (issued November 10, 2020); *see V.C.*, Docket No. 16-0694 (issued August 19, 2016).

⁵ OWCP assigned the claim OWCP File No. xxxxxx069. The Board notes that a appellant filed another claim for an August 31, 2018 employment incident under OWCP File No. xxxxxx842, which was accepted for a dog bite of the left calf. Appellant also filed a prior claim under OWCP File No. xxxxxx244 for injuries to her left ribs, left elbow, right knee and left knee, which OWCP processed as a short form closure. On return of the case record, OWCP should consider administratively combining OWCP File Nos. xxxxxx842, xxxxxx244, and xxxxxx069.